

*In the*

**United States Court of Appeals**  
*for the*  
**Eleventh Circuit**

---

JAMES MICHAEL HAND, JOSEPH JAMES GALASSO, HAROLD W. GIRCSIS, JR., CHRISTOPHER MICHAEL SMITH, WILLIAM BASS, JERMAINE JOHNEKINS, YRAIDA LEONIDES GUANIPA, JAMES LARRY EXLINE, and VIRGINIA KAY ATKINS,

*Plaintiffs/Appellees,*

*v.*

RICK SCOTT, in his official capacity as Governor of Florida and member of the State of Florida's Executive Clemency Board, et al.,

*Defendants/Appellants.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
CASE NO: 4:17-cv-00128-MW-CAS

---

**APPELLEES' SUPPLEMENTAL BRIEF**

---

THEODORE LEOPOLD  
DIANA L. MARTIN  
POORAD RAZAVI  
COHEN MILSTEIN SELLERS & TOLL PLLC  
2925 PGA Boulevard, Suite 200  
Palm Beach Gardens, FL 33410  
tleopold@cohenmilstein.com  
dmartin@cohenmilstein.com  
prazavi@cohenmilstein.com  
(561) 515-1400

JON SHERMAN\*  
MICHELLE KANTER COHEN\*  
FAIR ELECTIONS CENTER  
1825 K Street NW, Suite 450  
Washington, DC 20006  
(202) 331-0114  
jsherman@fairelectionscenter.org  
mkantercohen@fairelectionscenter.org  
\*Appearing *Pro Hac Vice*

*Counsel for Appellees*

---

*Hand, et al. v. Scott, et al.*  
*Eleventh Circuit Case 18-11388-G*

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

1. Plaintiffs-Appellees identify the following additional interested person as required by Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1:

A. Fair Elections Center, which is representing Plaintiffs-Appellees, was established to carry on the Fair Elections Legal Network's work as a separate 501(c)(3) non-profit organization.

2. In addition, prior to leaving her position at Fair Elections Legal Network, Brittnie R. Baker moved to withdraw as Plaintiffs' counsel and was terminated as counsel by the district court in this action. She is no longer counsel for Plaintiffs-Appellees.

3. Plaintiffs-Appellees certify that, other than as stated above, the Certificate filed by Defendants-Appellants in their Motion for Stay Pending Appeal is complete and accurate.

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	C-1
TABLE OF AUTHORITIES .....	ii
I. CLAIMS 1 AND 2.....	1
II. CLAIM 3 .....	2
III. VACATUR .....	3
CERTIFICATE OF COMPLIANCE.....	6
CERTIFICATE OF SERVICE .....	7

## TABLE OF AUTHORITIES

<i>United States v. Schaffer</i> , 240 F.3d 35, 38 (D.C. Cir. 2001) .....	3-4
<i>Vann v. Citicorp Savings of Ill.</i> , 891 F.2d 1507, 1509 (11th Cir. 1990) .....	3

## PLAINTIFFS' SUPPLEMENTAL BRIEF

### I. Claims 1 and 2

Claims 1 and 2 will be moot once Amendment 4 takes effect on January 8, 2019. As is evident from Defendants' brief, the parties agree that Amendment 4 is self-executing, that by its language it creates a non-discretionary system for felon voting rights restoration, and that the rule it announces – restoration upon “completion of all terms of sentence” – is objective. As of January 8, 2019, felons who meet Amendment 4’s objective rule may self-identify as restored felons on the voter registration form and will be added to the rolls. Accordingly, the First Amendment and Fourteenth Amendment violations found by the district court with respect to Claims 1 and 2 are cured by Amendment 4’s passage, and all of the Plaintiffs will regain their right to vote under that objective, non-discretionary, and self-executing rule for voting rights restoration.

Should there be any disputes regarding the interpretation of this state constitutional amendment’s language, those disputes are properly settled in the context of a case brought by a party with a live claim. The outcome of any such litigation would still be an objective, non-discretionary process. For instance, while Plaintiffs do not concede that all fines and/or court costs are “terms of [the] sentence” for purposes of Amendment 4, the restoration process is objective, non-discretionary, and immediate no matter how that question is resolved. In any event,

if Amendment 4 so requires, any Plaintiffs with outstanding court costs will pay these to ensure the restoration of their right to vote under Amendment 4's objective, non-discretionary rule. Because all Plaintiffs are now subject to a non-discretionary rule as to their voting rights restoration, there is no longer any live controversy as to Claims 1 and 2 attacking the arbitrariness of Florida's soon-to-be-former restoration scheme. Other federal constitutional issues may later develop depending on how the courts interpret Amendment 4 and how Florida officials implement it, but those are not raised by the claims in this appeal.

Therefore, no matter how the constitutional amendment is interpreted by the state courts, Claims 1 and 2 will be moot once Amendment 4 takes effect. Plaintiffs respectfully request that this Court dismiss this appeal as to Claims 1 and 2 as moot and without prejudice once the amendment takes effect on January 8, 2019.

## **II. Claim 3**

Claim 3 is also moot. As long as Amendment 4 is implemented appropriately as self-executing and individuals who have completed their full sentences are immediately able to register to vote without delay, restoration will be instantaneous for those who meet Amendment 4's requirements for the termination of their disenfranchisement. Under Amendment 4's express terms, restoration will happen immediately and without any need to await some action by state or local government officials. Since there is no restoration application under Amendment 4 and no

restoration decision to be made, there is no need for a reasonable, definite time limit on that decision-making. Were it otherwise, *i.e.* if, contrary to its clear language and Defendants' representations, Amendment 4 were not treated as self-executing and officials insisted on government action of some kind for restoration to take effect, then Claim 3 would very much present a live case and controversy. Under those circumstances, this case would need to be remanded for further proceedings. But since Defendants have represented to this Court that the Amendment is self-executing and the parties agree that restoration of the right to vote occurs *immediately* "upon completion of all terms of sentence," Claim 3 will be moot as well once Amendment 4 takes effect on January 8, 2019.

Plaintiffs respectfully request that this Court dismiss this appeal as to Claim 3 as moot and without prejudice.

### **III. Vacatur**

Plaintiffs also believe it would be proper to vacate the district court's opinion, as to those claims that were appealed, and vacate the motions panel's 2-to-1 order granting Defendants' motion for a stay of the injunction. A motions panel's order, of course, does not bind the panel hearing the case on the merits, 11th Cir. Rule 27-1(g), and this Court has vacated motions panel orders in the course of dismissing appeals for lack of jurisdiction. *Vann v. Citicorp Savings of Ill.*, 891 F.2d 1507, 1509 (11th Cir. 1990). "When a case becomes moot on appeal, whether it be during initial

review or in connection with consideration of a petition for rehearing or rehearing en banc, this court generally vacates the District Court's judgment, *vacates any outstanding panel decisions*, and remands to the District Court with direction to dismiss." *United States v. Schaffer*, 240 F.3d 35, 38 (D.C. Cir. 2001) (citations omitted) (emphasis added).

DATED: December 19, 2018 Respectfully submitted,

/s/ Michelle E. Kanter Cohen  
Jon Sherman\*  
D.C. Bar No. 998271  
Michelle E. Kanter Cohen\*  
D.C. Bar No. 989164  
Massachusetts Bar No. 672792 (inactive)  
Fair Elections Center  
1825 K St. NW, Suite 450  
Washington, DC 20006  
[jsherman@fairelectionscenter.org](mailto:jsherman@fairelectionscenter.org)  
[mkantercohen@fairelectionscenter.org](mailto:mkantercohen@fairelectionscenter.org)  
Phone: (202) 331-0114

Theodore Leopold  
Florida Bar No. 705608  
Diana L. Martin  
Florida Bar No. 624489  
Poorad Razavi  
Florida Bar No. 022876  
Cohen Milstein Sellers & Toll PLLC  
2925 PGA Boulevard | Suite 200  
Palm Beach Gardens, FL 33410  
[tleopold@cohenmilstein.com](mailto:tleopold@cohenmilstein.com)  
[dmartin@cohenmilstein.com](mailto:dmartin@cohenmilstein.com)  
[prazavi@cohenmilstein.com](mailto:prazavi@cohenmilstein.com)  
phone 561.515.1400

fax 561.515.1401

*Attorneys for Plaintiffs-Appellees*

\*Appearing *Pro Hac Vice* in the United States Court  
of Appeals for the Eleventh Circuit

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that the foregoing, Plaintiffs/Appellees' Supplemental Brief, complies with the type-volume and word-count limits of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 770 words.
2. I hereby certify that the foregoing, Plaintiffs/Appellees' Supplemental Brief, complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5)–(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

December 19, 2018

*/s/ Michelle E. Kanter Cohen*  
Michelle E. Kanter Cohen\*  
*Attorney for Plaintiffs-Appellees*

\*Appearing *Pro Hac Vice* in the  
United States Court of Appeals  
for the Eleventh Circuit

## CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2018, a true and correct copy of the foregoing document was served upon counsel for Defendants-Appellants, including those listed below, by filing it in this Court's CM/ECF system.

Amit Agarwal  
Solicitor General  
Fla. Bar No. 125637  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050  
Tel. (850) 414-3300  
Fax (850) 410-2672  
[amit.agarwal@myfloridalegal.com](mailto:amit.agarwal@myfloridalegal.com)  
[Jennifer.bruce@myfloridalegal.com](mailto:Jennifer.bruce@myfloridalegal.com)

Edward M. Wenger  
Chief Deputy Solicitor General  
Fla. Bar No. 85568  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050  
Tel. (850) 414-3300  
Fax (850) 410-2672  
[edward.wenger@myfloridalegal.com](mailto:edward.wenger@myfloridalegal.com)

Jonathan Alan Glogau  
Chief, Complex Litigation  
Florida Bar # 371823  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050  
850-414-3300  
[Jon.glogau@myfloridalegal.com](mailto:Jon.glogau@myfloridalegal.com)

chanda.johnson@myfloridalegal.com

Jordan E. Pratt  
Office of the Attorney General – Tallahassee FL  
The Capitol STE PL-01  
400 S Monroe St.  
Tallahassee, FL 32399  
850-414-3300  
Email: jordan.pratt@myfloridalegal.com

Lance Eric Neff (FBN 0026626)  
Senior Assistant Attorney General  
Office of the Attorney General  
The Capitol, Pl-01  
Tallahassee, Florida 32399-1050  
(850) 414-3681  
(850) 410-2672 (fax)  
lance.neff@myfloridalegal.com

*Attorneys for Defendants-Appellants*

December 19, 2018

/s/ Michelle E. Kanter Cohen  
Michelle E. Kanter Cohen\*  
*Attorney for Plaintiffs-Appellees*

\*Appearing *Pro Hac Vice* in the  
United States Court of Appeals  
for the Eleventh Circuit